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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------------|
| 09/901,279 | 07/09/2001 | Kimikazu Fujita | NAK1-BP41 | 7575 |
| 21611 7590 05/15/2007 SNELL & WILMER LLP (OC) 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626 | | | EXAMINER SHEPARD, JUSTIN E | |
| | | | ART UNIT 2623 | PAPER NUMBER |
| | | | MAIL DATE 05/15/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/901,279

Applicant(s)

FUJITA, KIMIKAZU

Examiner

Justin E. Shepard

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


**SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER**

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 4/26/07 have been fully considered but they are not persuasive.

First response to arguments:

The applicant argues that Eldering teaches repeatedly sending data, but does not teach repeatedly sending scripts. Column 10, lines 37-45 of Eldering teaches the idea of sending the data as well as a program map (the data indicating where and when to insert the commercial) is sent in the data stream. As the examiner has interpreted this transmission scheme as being repeatedly sent, the script (program map) is also repeatedly sent.

Additionally, on page 17 (top paragraph) the applicant provides that a script is something that is executed. No other definition was found that further clarifies or describes what the applicant means by a script. Therefore the program map cited by the examiner meets the limitation, as the program map is a piece of data that instructs the system to perform in a certain way when executed.

Second response to arguments:

The applicant argues that while there is a reproduction instruction, there is nothing in Suzuki that teaches generating said instruction. As stated in Suzuki (column 23, lines 14-16), it is taught that this instruction is transmitted by the HE and received by

the receiver. As this instruction is not created in the receiver, the examiner interprets this as teaching the instruction is generated either at the HE or before it reaches the HE.

Additionally, on page 17 (top paragraph) the applicant provides that a script is something that is executed. No other definition was found that further clarifies or describes what the applicant means by a script. Therefore the reproduction instruction cited by the examiner meets the limitation, as the reproduction instruction is a piece of data that instructs the system to perform in a certain way when executed.

Fourth response to arguments:

The applicant argues that Eldering teaches a VOD system, and not a commercial insertion system. The portion cited by the applicant only shows one use of the increased bandwidth available to modern cable systems. In a later portion (column 4, lines 8-14) Eldering teaches that one embodiment that it is indeed a commercial insertion system and therefore is not a VOD system.

Eighth response to arguments:

The applicant argues that the "program map" does not meet the limitation of a script. As the channel maps are used to instruct when and where the commercials should be inserted (column 11, lines 1-10). As the channel map is used to perform an action, it is interpreted as meeting the limitation of a script.

Ninth response to arguments:

The applicant continues to argue the reproduction time. Looking over the previous action (page 4, second paragraph), and prior actions, the examiner feels that this issue has been sufficiently dealt with.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS